

IN THE HIGH COURT OF ORISSA AT CUTTACK

RSA No.131 of 2011

In the matter of appeal under Section-100 of the Code of Civil Procedure assailing the judgment and decree passed by the learned 1st Additional District Judge, Berhampur in RFA No.4/76 of 2007-10 in confirming the judgment and decree passed by the learned Civil Judge (Senior Division), Berhampur in C.S. No.276 of 2003.

Sri Surendra Sahu

....

Appellant

-versus-

Sri Rabindranath Panigrahi

....

Respondent

**Appeared in this case by Hybrid Arrangement
(Virtual/Physical Mode):**

For Appellant

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M/s. P.K. Rath, P.K. Satpahty,
R.N. Parija, A.K. Rout,
S.K. Pattanaik and D.P. Pattnaik
(Advocates)

For Respondent

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Mr.S.P. Mishra, Sr. Advocate,
Mr. Somya Mishra, Santanu Das,
B.S.Panigrahi, J.K. Mohapatra,
S.K. Sahoo and S.K. Samantaray
(Advocates)

CORAM:

MR. JUSTICE D.DASH

Date of Hearing : 19.04.2022 : Date of Judgment:20.06.2022

D.Dash,J. The Appellant, by filing this Appeal, under Section-100 of the Code of Civil Procedure, 1908 (for short, 'the Code') has assailed the

judgment and decree passed by the learned First Additional District Judge, Berhampur in RFA No.4 of 2010. By the same, the Appeal filed by the present Appellant (Defendant) under section 96 of the Code has been dismissed whereby the judgment and decree passed by the learned Civil Judge (Sr. Division), Berhampur in Civil Suit No.276 of 2003 filed by the Respondent as the Plaintiff in decreeing the suit directing the Appellant (Defendant) to give vacant possession of the suit premises to the Respondent (Plaintiff) and pay arrear rent @ Rs.1000/- per month with effect from 01.07.2001 till 28.02.2003 and damage @ Rs.2000/- per month with effect from 01.05.2003 till vacation have been confirmed.

2. For the sake of convenience, in order to avoid confusion and bring in clarity, the parties hereinafter have been referred to, as they have been arraigned in the Trial Court.

3. Plaintiff's case is that he is the owner of the two shop rooms situated within the premises of his bungalow standing on the main road of Berhampur town. It is stated that in the year 1974, the Defendant occupied the above two shop rooms as a tenant on an agreed monthly rent of Rs.1,000/- with further agreement that he would bear the electric and other charges as per consumption and use. It is stated that he was carrying on commercial activity therein. As the Defendant was known to the family of the Plaintiff and at one point of time, he was working under them as a domestic servant; no such rent deed had been created for the purpose. The Defendant was regularly paying the rent till June, 2001 whereafter he became a defaulter. So on 27.01.2003, the Plaintiff served a notice upon the Defendant terminating the tenancy in terms of and as required under section 106 of the Transfer of Property Act. In the

notice the Defendant was asked to vacate the tenanted premises on or before 01.03.2003 by clearing the arrear rent. The notice being served, the Defendant gave a reply asserting that he had acquired the suit property by virtue of an oral gift as made by Ashalata Devi, who as per the case of the Plaintiff, is his adoptive mother. He thus said to be not in occupation of the premises as a tenant but on his own. The Plaintiff, therefore, filed the suit for eviction of the Defendant from the shop rooms further claiming the arrear rent and damages from the Defendant.

4. The Defendant in his written statement has stated that Ashalata Devi was the absolute owner of the suit premises. He denied the status of the Plaintiff as the adopted son of said Ashalata. It is his case that one Bhubaneswar Choudhury was in occupation of the suit premises as a tenant on payment of rent to Asalata Devi and he was running his business therein in the year 1974. Bhubaneswar Choudury vacated the suit premises in worst condition. Since the Defendant was working under Ashalata as her domestic servant and rendering all such services that too without receiving any salary since the year 1965, Ashalata was pleased to give the suit premises to him to run his business and earn his livelihood. So as agreed, the Defendant repaired those rooms and started his business under the name and style "Rupashree Chitralaya". He has been paying the electricity charges for the premises since then. It is his specific case that there was no relationship of landlord and tenant between the parties. It is further stated that he has acquired title over the suit shop rooms being in open, peaceful and continuous possession for all these years by way of adverse possession.

5. The Trial Court on the above rival pleadings having framed six issues has rightly taken up Issue No.4 as to the claim of the Plaintiff for

eviction of the Defendant from the suit premises. Upon consideration of the evidence, the issue has been first of all answered in favour of the relationship, then it has also provided the alternative reason justifying the decree of eviction stating as under:-

“XX XX XX XX

So, in the present case even if it will be treated that the defendant was not a tenant under the plaintiff but when admittedly he is under occupation of the suit premises and he denied the title of the Plaintiff and claims to have acquired title of the suit premises but failed to prove the same and when it has been held that the plaintiff has got right, title and interest over the suit property, in view of the ratio of the decisions discussed above, the defendant can be evicted from the suit premises. Hence, this issue is answered in favour of the Plaintiff.”

6. Having said as above, finally the Defendant has been directed to give vacant possession of the suit shop rooms to the Plaintiff and pay a sum of Rs.1,000/- per month towards arrear rent w.e.f. 01.07.2001 till 20.08.2003 and damages @ Rs.2,000/- per month w.e.f. 01.03,2003 till the eviction.

The Defendant having carried the First Appeal has been unsuccessful in upsetting the judgment and decree running against him. Hence, this Second Appeal.

7. The Appeal has been admitted on the following substantial questions of law:-

“1) Whether the learned Trial Court has committed gross illegality in coming to the conclusion that the Appellant-Defendant was the tenant under the Plaintiff by raising a presumption from surrounding circumstance and surmising that under such circumstance even a rustic man can say that the Defendant must have occupied the shop room in question as a tenant, in absence of any material to that effect?

(2) Whether the learned Lower Appellate Court has not discharged its duty as required under law being the final court of fact, by not dealing with all the issues raised in the suit and not addressing itself to the same?"

8. Mr. P.K. Rath, learned Counsel for the Appellant submitted that the present case is not one where the relationship of the landlord and tenant between the Plaintiff and the Defendant stands admitted and said the relationship as claimed by the Plaintiff is under serious dispute. He, therefore, submitted that the Plaintiff's suit for eviction in further claiming arrear rent and damages from the Defendant being based on the relationship between the landlord and tenant, with the evidence obtained, the Courts below on the failure of the Plaintiff to prove that the Defendant is a tenant under the Plaintiff, ought to have dismissed the suit leaving the Plaintiff to go for a duly constituted suit in claiming appropriate relief as against this Defendant.

He further submitted that mere by drawing certain inferences from some circumstances, the Trial Court ought not to have recorded the finding on that score of relationship between the parties. It was submitted that the courts below have not found out any documentary evidence in support of such relationship of the landlord and tenant between the Plaintiff and the Defendant when the oral evidence on this score are also not so clinching to record the finding on that score on preponderance of probability. According to him, the finding rendered by the Trial Court that the Defendant is a tenant under the Plaintiff is based on conjectures and surmises and suffers from the vice of perversity. He next submitted that the Trial Court, being not able to record a clear finding on that relationship has thus gone wrong to say that in the present suit being also based on title, as the Defendant has not established his case of acquisition of title, the Plaintiff is entitled entitled

to a decree for eviction, which is beyond the ambit and scope of the suit as laid in the present form and the reliefs claimed more-so when there was no issue on that subject. According to him, the Plaintiff having all through asserted the relationship and based his claim of eviction founded upon said relationship in the present suit on his failure to establish the relationship could not have been made entitled to the decree as prayed for. He submitted that the course open to the Plaintiff was either to file a regular suit for recovery of possession based on his title as the the same too is disputed by the Defendant who not only claims title unto himself but also has taken the alternative plea of acquisition of title by way of adverse possession, in the present suit, the prayers as advanced by the Plaintiff ought to have been allowed. He, therefore, contended that the Plaintiff is not entitled to the reliefs as have been granted to him by the Courts below in the suit as laid and the Courts below instead of adjudicating upon the title in the present suit ought to have left it open to be decided in a duly constituted suit if so filed later seeking appropriate relief.

9. Mr.S.P.Mishra, learned Senior Counsel for the Respondent submitted that the Courts below, have concurrently held in favour of the relationship of the landlord and tenant between the Plaintiff and Defendant and when there appears no such perversity with the same merely because a different view is possible to be taken, this Court, in seisin of the Second Appeal, should refrain from doing so as it is not permissible. He further submitted that even if for a moment, it is said that the evidence on record is not enough to give a finding with regard to the relationship as the Plaintiff claims with the Defendant; on the basis of the proven fact that the title over the land is resting with the Plaintiff when the case of the Defendant in advancing a competing claim of title over the

same has completely failed, the ultimate judgment and decree passed by the Courts below in decreeing the suit cannot be found fault with. In support of the same and refuting the submission of the learned Counsel for the Appellant that the relationship of landlord and tenant, as claimed by the Plaintiff, having been erroneously recorded by the Courts below, the present suit, for the reliefs claimed, cannot be decreed.

He has relied upon the decisions:-

“(i) Biswanath Agarwalla –V- Sabitri Bera & Others; (2009) 15 SCC 693;

(ii) Shadiram Sharma & others –V- Dinesh Kumar Modi & Others; 2006 OLR 549;

(iii) Shri Ram & another –V- Smt. Kasturi Devi & Another; AIR 1986 ALL 66; and

(iv) Sri Bhadreswar Pandit & Others –V- Pusparani Pandit; AIR 1991 Cal 405.”

10. Keeping in view the submissions made, I have carefully gone through the judgments passed by the Courts below. I have also travelled through the averments taken in the plaint and written statement and have perused the evidence both oral and documentary on record.

11. On the rival pleadings, as already narrated, the Trial Court has framed the following issues:-

- “1. Whether the suit is maintainable under law?;
2. Whether there is any cause of action to file the suit?;
3. Whether the suit is barred by law of limitation?;
4. Whether the defendant is to be evicted from the suit premises?;
5. Whether the plaintiff is entitled to realize the arrear rents and damages from the defendant as claimed for?; and
6. To what other relief(s), the plaintiff is entitled for?”

The very case of the Plaintiff is that he being the owner and landlord of the suit premises and the Defendant being a monthly tenant, when has failed to give vacant delivery of possession after termination of

tenancy by notice in writing, he is entitled to a decree of eviction as also other monetary reliefs.

At the cost of repetition, it may be stated that the Defendant has denied the said relationship as claimed by the Plaintiff and also the status of the Plaintiff as adopted son of the original owner Ashalata Devi and thereby becoming the sole owner on her death.

The important issues, in view of the pleading, are issue nos.4 and 5.

First of all, while dealing with issue no.4, it appears that the Trial Court was conscious of the position that in an eviction suit, existence of the relationship of landlord and tenant stands to be decided and the question of title is redundant. Thereafter, having gone to so decide upon available evidence, the Trial Court has also said the followings:-

“XX XX XX

So, now it is to be seen whether there exists a relationship of landlord and tenant between the parties. In the present case, admittedly, there is no lease deed to prove such relationship. To establish the relationship of landlord and tenant, the plaintiff has produced his note book vide Ext.9. Ext.9/a are some entries in the note book which disclose about receipt of rents from the defendant on different dates in respect of the suit premises.

In a case report in AIR 1992, Rajasthan 149, it has been observed that, an entry in the ‘Bahi Khatra’ is an admission by its maker in his own favour. It is accepted as evidence if the Khata indeed kept regularly in ordinary course of business. The words “regularly kept” means the account kept in accordance with certain fixed method or form. Although section 34 of the Evidence Act dispensed with formal proof of account having been kept in regular course of business, it is a matter of intrinsic evidence whether the books were the books of account regularly kept in course of business. So, Ext.9 shall not alone be sufficient evidence to establish the relationship of landlord and tenant. So, I have to see other circumstances to infer whether

the defendant was a tenant under the plaintiff. As it shows from the case record, prior to occupation of the suit shop rooms by the present defendant it was occupied by a tenant who was running his business therein under the name and style “Choudhury Automobiles”. Though the defendant claims that he suit premises was in a broken condition and it was given to him in order to start a business for his livelihood, but from his statement it clearly shows that, much prior to occupation of the suit premises, he was running his business organization “Rupashree Chitralaya” in some other tenanted premises. When admittedly the tenanted premises were the shop rooms before the occupation of the defendant and he shifted his business from some other tenanted premises to the suit premises, under the above back ground, even a rustic man can say that the defendant must have occupied the shop rooms in question as a tenant. The intention to create a relationship of landlord and tenant can be determined from the surrounding circumstances, i.e., the nature of the premises and the purpose of occupation. When a shop room which was occupied by a tenant was given to another person in order to run a business, it has to be inferred that the above person also occupied the shop rooms as a tenant.

In the present case, the plaintiff clearly and categorically stated that the present defendant occupied the suit premises as a tenant to run his business under the name and style “Rupashree Chitralaya”. He also deposed in the Court that, as the plaintiff was a domestic servant in their family and due to such close relationship, no rent deed was executed between them for such tenancy and he was also not granting any rent receipt.

(Emphasis Supplied)

Xx xx xx xx

Xx xx xx xx

Xx xx xx xx

So, this being the position of law, only because no written lease deed or rent receipt was filed on behalf of the plaintiff, it cannot be said that the defendant is not a tenant under the plaintiff. So, on overall consideration of the facts and circumstances of the case, and in view of the ratio of the decisions discussed above, I am of the opinion that there was a relationship of landlord and

tenant between the plaintiff and the defendant occupied the suit premises as a tenant.”

Having said as above, when going to answer as to whether the Plaintiff is entitled to evict the Defendant from the suit premises or not, the Trial Court has again stated that even if it will be treated that the defendant was not a tenant under the plaintiff but when admittedly he is under occupation of the suit premises and he denied the title of the plaintiff and claiming to have acquired title of the suit premises has failed to prove the same and when it has been held that the plaintiff has got right, title and interest over the suit property, in view of the ratio of the decisions discussed therein, the defendant can be evicted from the suit premises.

12. Indisputedly Ashalata Devi was the original owner of the suit premises. The Plaintiff, in order to establish his status as the adopted son of said Ashalata, has proved the registered adoption deed (Ext.1) and some other documents such as a publication to that effect being made in the Official Gazette, certificate issued by the Board of Secondary Education, Orissa and other revenue records. The Trial Court, having accepted the above evidence, has gone to record a finding that the Plaintiff will be treated as the owner of the suit premises, if otherwise his title has not been lost, which in my view, the Trial Court was not under the legal obligation to say in the present suit where the Plaintiff's claim of eviction of the Defendant is based upon the relationship of landlord and tenant and the termination of the tenancy giving rise to the cause of action for filing the suit.

Then again, the Trial Court interestingly has jumped to decide the claim of the Defendant over the suit premises as to have been so acquired by oral gift which was also not required to be taken up within the four

corners of the present suit filed by the Plaintiff in seeking the reliefs, as stated.

Instead of proceeding to straight away to discuss the evidence and decide as to whether the parties are under such relationship of landlord and tenant, now the Trial Court is seen to have gone to decide the fate of the claim of the Defendant as to have acquired title over the suit premises by way of adverse possession. The Trial Court has concluded that the Plaintiff is the owner of the suit premises. While ruling upon the relationship between the parties, it has noted that there is no such lease deed to prove the relationship. Coming to a note book (Ext.9 and Ext.9/a), which disclose receipt of rent from the Defendant on different dates in respect of the suit premises, it has held that Ext.9 alone is not sufficient to establish the relationship of landlord and tenant. Having said above, some surrounding circumstances have been taken into account in holding that there was the relationship of landlord and tenant between the Plaintiff and Defendant and the Defendant occupied the suit premises as a tenant. At this juncture, it be stated that Ext.9 is a note book maintained by the Plaintiff where he says to have written down the factum of receipt of rent from the Defendant. In fact no such rent receipts has been proved nor in the note book, the signature of the Defendant appears at any place admitting those entries. The oral evidence from both sides particularly on the question of relationship appear to be evenly balanced; when the Plaintiff says in favour of the relationship, the Defendant denies the same. The facts that prior to the occupation of the shop rooms, the occupation was with a tenant and this Defendant having left the earlier place in his occupation as a tenant, has come to occupy the suit premises have been given emphasis upon in ruling in favour of relationship. Said circumstances, themselves cannot form the foundation

for the finding of relationship and could have only been taken to provide support to the finding of relationship when otherwise established. The view from those circumstances as taken by the Trial Court that even a rustic man would say that the Defendant must have occupied the suit premises as a tenant is thus perverse and untenable. The Trial Court as well as the First Appellate Court as it appears have not started the journey to answer the crucial issue no.4 right from the point keeping in view the nature of the suit and its scope.

For all the aforesaid, this Court is of the opinion that the finding rendered in favour of the relationship of landlord and tenant between the Plaintiff and Defendant suffers from the vice of perversity and thus cannot be sustained.

13. This now takes me to address the point that notwithstanding the failure on the part of the Plaintiff in proving the relationship of landlord and tenant between him and the Defendant, whether in the present suit, basing upon the title of the Plaintiff over the suit premises, the Defendant can be directed to be evicted therefrom.

For the purpose, it is required to be dwelt upon the facet of applicability of the said authorities more importantly, the decision of Bhagawati Prasad (Supra) which has been assiduously commended to me by Mr. Mishra as applicable to the lis of the present nature.

In the said case of Bhagwati Prasad (supra) the defendant was the appellant before the Apex Court. The case of the plaintiff was that the defendant was in possession of the house as the tenant of the plaintiff. The defendant admitted that the land over which the house stood belonged to the plaintiff. He, however, pleaded that the house had been constructed by the defendant at his own cost and that too at the request of the plaintiff because the plaintiff had no funds to construct the building

on his own. Having constructed the house at his own cost, the defendant entered into possession of the house on condition that the defendant would continue to occupy the same until the amount spent by him on the construction was repaid to him by the plaintiff. In this backdrop, the defendant resisted the claim made by the plaintiff for ejectment as well as for rent. The learned trial Judge held that the suit was competent and came to the conclusion that the plaintiff was entitled to a decree for ejectment as well as for rent. The High Court agreed with the trial court in disbelieving the defendants version about the construction of the house and about the terms and conditions on which he had been let into possession. The High Court opined that the defendant must be deemed to have been in possession of the house as a licensee and accordingly opined that a decree for ejectment should be passed. Dealing with various contentions raised before this Court it was ruled that the defendant could not have taken any other plea barring that of a licensee in view of the pleadings already put forth and the evidence already adduced. In that context, the Apex Court opined that the High Court had correctly relied upon the earlier Full Bench decision in *Abdul Ghani v. Musammat Babni*; 25 ALL 256 and *Balmukund v. Dalu* 25 ALL 4978. An opinion was expressed by the Apex Court that once the finding was returned that the defendant was in possession as a licensee, there was no difficulty in affirming the decree for ejectment, even though the plaintiff had originally claimed ejectment on the ground of tenancy and not specifically on the ground of licence. In that context it was observed thus:-

“15. ... In the present case, having regard to all the facts, we are unable to hold that the High Court erred in confirming the decree for ejectment passes by the trial Court on the ground that the defendant was in possession of the suit premises as a licensee. In this case, the High Court was obviously impressed

by the thought that once the defendant was shown to be in possession of the suit premises as a licensee, it would be built to require the plaintiff to file another suit against the defendant for ejectment on that basis. We are not prepared to hold that in adopting this approach in the circumstances of this case, the High Court can be said to have gone wrong in law.”

In case of Biswanath Agarwalla (Supra) strongly relied upon by Mr.Mishra, the question posed was whether a civil court can pass a decree on the ground that the defendant is a trespasser in a simple suit for eviction. In the said case the learned single Judge of the Calcutta High Court, considering the issues framed and the evidence laid, had held that although the plaintiffs had failed to prove the relationship of landlord and tenant between them and the defendant or that the defendant had been let into the tenanted premises on lease and licence basis, the respondent-plaintiffs were entitled to a decree for possession on the basis of their general title. The Apex Court took note of the relief prayed, namely, a decree for eviction of the defendant from the schedule premises and for grant of mesne profit in case the eviction is allowed at certain rates. The Court proceeded on the base that the plaintiff had proved his right, title and interest. The Court observed that the landlord in a given case, although may not be able to prove the relationship of landlord and tenant, yet in the event he proves the general title, may obtain a decree on the basis thereunder. But regard being had to the nature of the case the Court observed that the defendant was entitled to raise a contention that he had acquired indefeasible title by adverse possession. The Court referred to the decision in Bhagwati Prasad (supra) and, eventually, came to hold as follows: -

“27. The question as to whether the defendant acquired title by adverse possession was a plausible plea. He, in fact, raised the same before the appellate court. Submission before the first

appellate court by the defendant that he had acquired title by adverse possession was merely argumentative in nature as neither there was a pleading nor there was an issue. The learned trial court had no occasion to go into the said question. We, therefore, are of the opinion that in a case of this nature an issue was required to be framed. Thereafter, the two-Judge Bench issued the following directions:

29. However, we are of the opinion that keeping in view the peculiar facts and circumstances of this case and as the plaintiffs have filed the suit as far back as in the year 1990, the interest of justice should be subserved if we in exercise of our jurisdiction under Article 142 of the Constitution of India issue the following directions with a view to do complete justice to the parties.

- i) The plaintiffs may file an application for grant of leave to amend their plaint so as to enable them to pray for a decree for eviction of the defendant on the ground that he is a trespasser.
- ii) For the aforementioned purpose, he shall pay the requisite court fee in terms of the provisions of the Court Fees Act, 1870.
- iii) Such an application for grant of leave to amend the plaint as also the requisite amount of court fees should be tendered within four weeks from date.
- iv) The appellant-defendant would, in such an event, be entitled to file his additional written statement.
- v) The learned trial Judge shall frame an appropriate issue and the parties would be entitled to adduce any other or further evidence on such issue.
- vi) All the evidences brought on record by the parties shall, however, be considered by the court for the purposes of disposal of the suit.”

As per the exposition of facts, the analysis made and the principles laid down in both the cases, it is noticed that the civil action was initiated under the provisions of Transfer of Property Act, 1882.

13. In case of *Rajendra Tiwary –V-Basudeo Prasad and another*; AIR 2002 SC 136, the respondent-plaintiff had filed a suit for eviction under

the Bihar Buildings (Lease, Rent and Eviction) Control Act, 1982 on many a ground. The learned trial Judge, appreciating the evidence on record, dismissed the suit for eviction holding that there was no relationship of landlord and tenant between the plaintiff and the defendant. However, he had returned a finding that the plaintiff had title to the suit premises. The appellate court affirmed the judgment of the learned trial Judge and dismissed the appeal. In second appeal, the High Court reversed the decisions of the Courts below and allowed the appeal taking the view that a decree for eviction could be passed against the defendant on the basis of the title of the plaintiff and, accordingly, remanded the case to the first appellate court on the ground that it had not recorded any finding on the question of the title of the parties. It was contended before the Apex Court that as the trial court was exercising limited jurisdiction under the Rent Act, the question of title to the suit premises could not be decided inasmuch as that had to be done by a civil court in its ordinary jurisdiction and, therefore, the High Court erred in law in remanding the case to the first appellate court for deciding the question of title of the plaintiff and passing an equitable decree for eviction of the defendant. The Apex Court posed a question whether on the facts and in the circumstances of the case the High Court was right in law holding that an equitable decree for eviction of the defendant could be passed under Order VII Rule 7 of the Civil Procedure Code and remanding the case to the first appellate court for recording its finding on the question of title of the parties to the suit premises and for passing an equitable decree for eviction against the defendant if the plaintiffs were found to have title thereto. Answering the question the learned Judges proceeded to state thus:-

“It is evident that while dealing with the suit of the plaintiffs for eviction of the defendant from the suit premises under clauses

(c) and (d) of sub-section (1) of Section 11 of the Act, courts including the High Court were exercising jurisdiction under the Act which is a special enactment. The sine qua non for granting the relief in the suit, under the Act, is that between the plaintiffs and the defendant the relationship of landlord and tenant should exist. The scope of the enquiry before the courts was limited to the question: as to whether the grounds for eviction of the defendant have been made out under the Act. The question of title of the parties to the suit premises is not relevant having regard to the width of the definition of the terms landlord and tenant in clauses (f) and (h), respectively, of Section 2 of the Act.”

In course of deliberation, the two-Judge Bench distinguished the authorities in *Firm Srinivas Ram Kumar v. Mahabir Prasad*: AIR 1951 SC 177 and *Bhagwati Prasad* (supra) by observing thus: -

“15. These are cases where the courts which tried the suits were ordinary civil courts having jurisdiction to grant alternative relief and pass decree under Order VII Rule 7. A Court of Rent Controller having limited jurisdiction to try suits on grounds specified in the special Act obviously does not have jurisdiction of the ordinary civil court and therefore cannot pass a decree for eviction of the defendant on a ground other than the one specified in the Act. If, however, the alternative relief is permissible within the ambit of the Act, the position would be different. [Emphasis supplied]

20. Thereafter, the learned Judges proceeded to express thus:

16. In this case the reason for denial of the relief to the plaintiffs by the trial court and the appellate court is that the very foundation of the suit, namely, the plaintiffs are the landlords and the defendant is the tenant, has been concurrently found to be not established. In any event inquiry into title of the plaintiffs is beyond the scope of the court exercising jurisdiction under the Act. That being the position the impugned order of the High Court remanding the case to the first appellate court for recording finding on the question of title of the parties, is unwarranted and unsustainable. Further, as pointed out above, in such a case the provisions of Order VII Rule 7 are not attracted. [Underlining is ours]”

14. Fruitful reference may be made to the principle laid down in the case of Dr. Ranbir Singh –V- Asharfi Lal; (1995) 6 SCC 580. In the said case, the Court was dealing with the case instituted by the landlord under Rajasthan Premises (Control of Rent and Eviction) Act, 1950 for eviction of the tenant who had disputed the title and the High Court had decided the judgment and decree of the courts below and dismissed the suit of the plaintiff seeking eviction. While advertng to the issue of title, the Court ruled that in a case where a plaintiff institutes a suit for eviction of his tenant based on the relationship of the landlord and tenant, the scope of the suit is very much limited in which the question of title cannot be gone into because the suit of the plaintiff would be dismissed even if he succeeds in proving his title but fails to establish the privity of contract of tenancy. In a suit for eviction based on such relationship the Court has only to decide whether the defendant is the tenant of the plaintiff or not, though the question of title if disputed, may incidentally be gone into, in connection with the primary question for determining the main question about the relationship between the litigating parties. In the said case the learned Judges referred to the authority in LIC v. India Automobiles & Co. AIR 1991 S.C.884 wherein the Court had observed that in a suit for eviction between the landlord and tenant, the Court will take only a prima facie decision on the collateral issue as to whether the applicant was landlord. If the Court finds existence of relationship of landlord and tenant between the parties it will have to pass a decree in accordance with law. It was further observed therein that all that the Court has to do is to satisfy itself that the person seeking eviction is a landlord, who has prima facie right to receive the rent of the property in question. In order to decide whether denial of landlords title by the tenant is bona fide the Court may have to go into tenants contention on the issue but the Court is

not to decide the question of title finally as the Court has to see whether the tenants denial of title of the landlord is bona fide in the circumstances of the case.

15. Adverting to the case at hand, here the Plaintiff had filed the suit for eviction. It was filed before the forum which did not lack inherent jurisdiction to pass a decree for delivery of possession. It showed the intention of the Plaintiff to act and to take back the possession. The settled position of law is that once a suit for recovery of possession against the Defendant who claims to be in adverse possession is filed, the period of limitation for perfecting title by adverse possession comes to a grinding halt. This being the statement of law, the filing of the present suit for eviction would certainly arrest the running of the period of adverse possession by the Defendant. Be it ingeminated that if by the date of present suit, the Defendant had already perfected title by adverse possession that would stand on a different footing. The substantial questions of law are thus answered against the reliefs sought for by the Plaintiff as against the Defendant within the ambit and purview of the present suit in the form it has been laid. The Plaintiff thus in the present suit is not entitled to a decree for eviction as well as arrear rent and damage as allowed by the Courts below.

In view of the aforesaid analysis, the Courts below should have dismissed the suit for eviction, arrear of rent and damage leaving the Plaintiff to come up in another suit claiming title and recovery of possession, if so advised. In that view of the matter, while setting aside the judgments and decrees passed by the Courts below in decreeing his suit. On the anvil of the settled law as discussed; the Plaintiff is, however, permitted to institute a suit as entitled under law for title and recovery of

possession and such other reliefs as the law permit within a period of three months from today.

16. Resultantly, the Appeal is allowed with the orders as above leaving the parties to bear their respective costs all throughout.

***(D. Dash),
Judge.***

Basu

